

Proposals for Austin Lobbyist Registration and Disclosure Modernization and Reform

Executive Summary: Austin's current lobbyist registration law is ambiguous, resulting in numerous persons lobbying Austin City Hall for compensation without registering. With paid, professional lobbyists not having registered for years, Austin's lobbyist registration system has broken down, undermining transparency and public faith in government. In addition to porous lobbyist registration, the city law does not require disclosure of the amounts lobbyists are paid, or the names and amounts of paid persons aiding the lobbyists. Austin's law's ambiguities have been exploited because Austin's law has not been overhauled in over 20 years ago. Major revisions are needed now to ensure lobbyist transparency and disclosure, while continuing to allow lobbyists to continue playing their important role in our governmental process.

How Lobbyist Registration Laws Generally Work: To disclose paid lobbyists' activities to influence governmental decision-making, lobbyists are required to register annually and pay a fee (\$300 in Austin). The trigger for registering is when lobbyists are paid compensation or receive reimbursement over a certain threshold amount (\$200 a quarter in Austin) to influence a governmental matter. Therefore, key definitions for triggering paid city lobbyist registration are "compensation", "lobbying", and "municipal questions". Once registered lobbyists are registered, they usually must report periodically the matters they lobby on and their compensation. Austin requires quarterly reporting on municipal matters lobbied on, but does not require reporting on the amount of compensation of lobbyists (unlike state law). There are penalties and enforcement mechanisms to ensure compliance, although Austin's are weak and not utilized.

Eight Essential Reforms. There are eight needed areas of lobbyist reform to ensure proper transparency in Austin's government. These reforms are based mainly on Texas' state registration law provisions that have worked much better than the city's provisions.

1. Clarify Unclear Definitions of Compensation and Lobbying. City law defines "compensation" and "expenditures", both of which trigger paid lobbyist registration, to exclude payments to a person as part of their regular employment and whose lobbying is incidental to their employment. Austin City Code, Section 4-8-2(2), (3). "Incidental" is undefined and amorphous; this exception does not exist in current state law, although it used to be years ago before it was eliminated. (State regulations exempt anyone that lobbies less than 5% of their uncompensated time, which has been difficult to monitor and enforce). The incidental exception should be eliminated in the city's definition of "compensation." In addition, unlike under state law, "compensation" under Austin's law does not explicitly include preparation by the person lobbying or their aides. 1 Texas Administrative Code 34.5 This is a large loophole and should be closed. Unlike city law, state law explicitly excludes certain specific non-lobbying activities from compensation, making it clearer what triggers lobby registration and what does not. 1 T.A.C. 34.5. Many of these narrow exclusions should be incorporated into Austin's definition of compensation.

City law also defines "lobbying" less precisely than state law, using the operative term "soliciting" to influence city officials on a municipal question. City Code, Section 4-8-2 (6). State law focuses on a person "directly communicating" to influence a state employee on a state matter, with preparation for

that person's communication included in their compensation and expenditures. Texas Government Code, Section 305.002(2). The state's approach provides more transparency.

2. Lobbying Should Include Lobbying All City Employees. City law includes for lobbying purposes trying to influence only the council, their aides, certain commissions, and high level city employees: the city manager, assistant city managers, city attorney, assistant city attorneys, department directors or assistant apartment directors. City Code Section 4-8-3. However, many mid-level and other city staff are lobbied because they are actually reviewing and making the discretionary decisions on municipal questions. Their decisions are reviewed only cursorily, if at all, by the department heads. State law does not exclude any state employees from the ambit of lobbying; though, state law excludes explicitly from lobbying communicating about clerical and non-discretionary decisions. Texas Government Code, Section 305.002 (4); 1 T.A.C. 34.5. This approach yields more transparency, since it is the city employee's influence on a municipal question that matters, not their title.

3. Raise the Lobbyist Registration Threshold. A person must register in Austin if they are paid or expend \$200 or more in a calendar quarter. If compensation is defined properly (including preparation and reducing exceptions), this threshold captures too many people who are paid an insubstantial amount to lobby only sporadically. State law's threshold per quarter is \$1000. Our threshold should be raised.

4. Registration Fees Should Distinguish Between 501c3 lobbyists and For-Profit and Other Lobbyists. Everyone in Austin that meets the lobbyist registration threshold must register and pay \$300. This should be raised and automatically raised with the cost-of-living. Under state law, a lower fee is required for all non-profit lobbyists. We recommend that city law allow 501c3 lobbyists, who by definition cannot engage in electoral activity, to register for a smaller amount, say \$50-\$100 a year.

5. Narrow Our Lobbying Exceptions. One overly broad city lobbying exception excludes from lobbying conversations between Austin officials and lobbyists at restaurants and events (if they are "only" attending and they don't pay for the event for the city official). City Code, Section 4-8-4(3). Currying goodwill to influence state action is considered lobbying under state law. Another overly broad exception exempts from lobbying "dispute resolution" if it does not involve a city council member or final decision-maker. Again, this exception is way too broad and doesn't exist under state law. City Code, Section 4-8-3(7).

6. Lobbyist Reports Should Include Compensation Amounts and Lobbyist Preparers. City law requires all lobbyists' clients to be listed, but doesn't require that the amounts paid by the clients be disclosed. City Code, Section 4-8-6(A). State law requires compensation amounts to be disclosed within ranges, and so should Austin to ensure transparency. Texas Government Code, Section 305.005(g). Austinites should know if there is a large, expensive campaign to lobby City Hall.

In addition, Austin, unlike state law, does not explicitly require that paid persons, who prepare and aid lobbyist in directly communicating with government officials, be disclosed by a registered lobbyist. City Code, Section 4-8-6. Texas Government Code, Section 305.005(f)(B(4)).

This lobbyist preparation is an integral part of their attempt to influence a city official, and often costs substantially more money and personnel than the actual direct communications with the official. The lobbyist should be required to list their assistants, the specific municipal matters they worked on, and the amount of their compensation.

7. Updating Reports. Unlike state law, city lobbyists can add clients and wait to report them till their next quarterly report. Lobbyists also can delay triggering reporting until their first day of direct communication, rather than the earlier of their communication or entering into a lobbyist agreement. City Code, Sections 4-8-2(2), 4-8-6. State law requires updating all new clients when the legislature is in session. Texas Government Code, Section 305.065. This ensures all clients and lobbying issues are revealed timely.

8. Enhancing Enforcement. The maximum city penalty for violation of the city's lobbyist registration law is a Class C misdemeanor (\$500). State law's criminal penalty for failing to register is a Class A misdemeanor, which can include jail time. While the city's criminal penalty for failure to register and report cannot be changed, it should be made clear that each violation is a separate offense subject to a \$500 fine for each violation. In addition, city law should provide that the lobbyist filings are subject to state perjury laws for intentionally filing a material false statement. The law also should require the City Auditor, rather than the City Clerk, to review the registration and report forms for completeness and timeliness. The City Auditor also should randomly annually audit for compliance 5-10% of all lobbyist registrants.

Conclusion: Government transparency is essential for the public's faith in government. Austin's lobbyist laws needed to be reformed to ensure that essential transparency.

Ideas for Comprehensive Lobbyist Disclosure Reforms

Austin's current lobbyist registration law is ambiguous, allowing numerous firms and individuals to lobby Austin's government for compensation without registering and disclosing. These ambiguities undermine lobbyist transparency and public faith in government. Significant revisions are needed to ensure lobbyist transparency and disclosure, while continuing to allow lobbyists to play their important and constitutional role in our governmental process.

These reforms modernize and clarify the city's lobbyist laws, increasing the number of paid people that must register to lobby and what they must report. The reforms, however, also clearly exclude persons who are not actually lobbying or doing it de minimus. These reforms are based primarily on Texas' state law provisions, which are substantially clearer and more comprehensive than the city's laws. These reforms will:

1. Clarify the meaning of the key definitions of lobbying, compensation, and municipal question.
2. Expand the scope of lobbying to include all direct communications to influence all city employees involved in discretionary decision-making, and not just communications with department heads. Following other cities' laws, exclude from lobbying related to the development process only non-discretionary, non-appealable staff decision on land development. decisions.
3. Delineate more precisely lobbyist compensation exceptions, eliminating, for example, the amorphous incidental lobbying exception and incorporating more narrow state law exceptions.
4. Include lobbyist preparation and lobby preparers in compensation and disclose their identity and amounts, like state law.
5. Raise the lobbyist registration compensation threshold from \$200 a quarter to exclude minimal lobbying. Change the registration fees to require a lower registration fee for paid lobbyists for 501c3 nonprofits.
6. Include in lobbyist reporting the amount of the lobbyists' compensation within ranges.
7. Require itemization of lobbyist expenditures for meals, lodging, travel, etc. over \$50, which is now set at \$500.
8. Specify that itemizing lobbyist expenditures exempts lobbyists from criminal exposure under Texas Penal Code Section 36.02.
9. Require lobbyists to update their reports when they add new clients or new municipal questions.